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OPEN MEETING

MEMORANDUM

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AZ CORP COMMISSION  
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TO: THE COMMISSION

FROM: Utilities Division

DATE: November 14, 2001

RE: THE APPLICATION OF MORENCI WATER & ELECTRIC COMPANY FOR  
A PARTIAL WAIVER OF PUBLIC UTILITY HOLDING COMPANIES AND  
AFFILIATED INTERESTS RULES (A.A.C. R14-2-801, *et seq.*) (DOCKET NO.  
E-01049A-01-0692)

On September 4, 2001, Morenci Water & Electric Company ("MWE" or "Company") filed an application for a partial waiver of the Arizona Corporation Commission's ("Commission") public utility holding companies and affiliated interests rules, A.A.C. R14-2-801, *et seq.* ("Rules"). These Rules regulate the formation of public utility holding companies and certain transactions and activities between public service corporations and their affiliated interests.

The Rules provide that the Commission has 30 days to "approve, disapprove, or suspend for further consideration" an application seeking a waiver of the Rules. A.A.C. R14-2-806. On September 19, 2001, Staff and MWE executed a stipulation for extension of the time period to approve, disapprove, or suspend for an additional 60 days to provide Staff with additional time to analyze the application.

On October 5, 2001, the Hearing Division issued a Procedural Order extending the timeframe to approve, disapprove, or suspend for further consideration this application until December 3, 2001.

MWE is a wholly-owned subsidiary of Phelps Dodge Corporation ("PDC"), a New York corporation headquartered in Phoenix, Arizona. MWE serves approximately 2,000 residential and small business customers in portions of Greenlee County, Arizona. One of MWE's customers is Phelps Dodge Mining Company, which accounts for most of MWE's demand and revenues.

PDC is one of the world's largest mining companies. PDC provided lists of 217 wholly-owned subsidiaries and another 39 subsidiaries that are at least 50 percent owned by PDC, all of which would be considered affiliates of MWE under the Rules. PDC and its affiliates generated over \$4.5 billion in revenues during the year 2000, of which approximately \$60 million (or 1.3 percent) was generated by MWE.

Arizona Corporation Commission

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MWE asserts that the full application of the Rules is unnecessary and burdensome since most of PDC's revenues are generated by, and its capital investments are in, unregulated businesses.

MWE asserts that most of PDC's activities have little or no effect on Arizona or MWE.

MWE requests a limited waiver of A.A.C. R14-2-803 that limits notice of organizations and reorganizations to organizations or reorganizations that are likely to have a material adverse impact on MWE.

MWE requests a limited waiver of A.A.C. R14-2-804 (B)(1) that waives Commission approval for MWE to obtain a financial interest, or guarantee or assume the liabilities of an affiliate except for transactions that are likely to have a material adverse impact on MWE.

MWE requests a waiver of all the other requirements of A.A.C. R14-2-804 including the reporting of loans, evidences of indebtedness, and all other transactions between and among MWE's affiliates and parent in the ordinary course of business.

MWE requests a complete waiver of A.A.C. R14-2-805 eliminating a requirement to file annual reports on PDC's diversification activities and plans.

MWE requests expedited consideration and a stay of the Rules during the period of consideration of this application.

Staff has determined that approval of MWE's request for a limited waiver of A.A.C. R14-2-803 to restrict reporting requirements to organizations and reorganizations that are likely to have a material adverse impact on MWE may allow significant organizations and reorganizations to occur without Commission oversight. Staff recommends a limited waiver that would require the reporting of organizations and reorganizations that are likely to have a direct impact on MWE's financial statements in excess of a total of \$100,000.

Staff also determined that the request for a limited waiver of A.A.C. R14-2-804 (B)(1) and the waiver of the remainder of A.A.C. R14-2-804 might allow significant transactions to occur without Commission oversight. Staff recommends a limited waiver that would require the reporting of all transactions that are likely to have a direct impact on MWE's financial statements in excess of a total of \$100,000.

Staff recommends approval of MWE's request for a waiver of A.A.C. R14-2-805. Staff notes that the other reporting requirements of the Rules may have a more direct effect on MWE than the annual report required in this section.

THE COMMISSION

November 14, 2001

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Staff notes that MWE became subject to the Rules in 1998. However, to accommodate MWE's needs, Staff recommends approval of a retroactive waiver of the Rules for MWE for the period from 1998 until this Order is effective, to be supplanted by the limited waiver approved herein.

Staff recommends the Decision in this case be made retroactive to when the Rules became applicable to MWE in 1998.

A handwritten signature in dark ink, appearing to read 'EGJ', followed by a long horizontal flourish.

Ernest G. Johnson  
Director  
Utilities Division

EGJ:DWC:jbc/CCK

ORIGINATOR: Darron W. Carlson

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**BEFORE THE ARIZONA CORPORATION COMMISSION**

WILLIAM A. MUNDELL  
Chairman  
JIM IRVIN  
Commissioner  
MARC SPITZER  
Commissioner

IN THE MATTER OF THE APPLICATION OF )  
MORENCI WATER & ELECTRIC COMPANY )  
FOR A PARTIAL WAIVER OF PUBLIC UTILITY )  
HOLDING COMPANIES AND AFFILIATED )  
INTERESTS RULES (A.A.C. R14-2-801, *et seq.*) )

DOCKET NO. E-01049A-01-0692  
DECISION NO. \_\_\_\_\_  
ORDER

Open Meeting  
November 27 and 28, 2001  
Phoenix, Arizona

BY THE COMMISSION:

FINDINGS OF FACT

1. On September 4, 2001, Morenci Water & Electric Company ("MWE" or "Company") filed an application for a partial waiver of the Arizona Corporation Commission's ("Commission") public utility holding companies and affiliated interests rules, A.A.C. R14-2-801, *et seq.* ("Rules"). These Rules regulate the formation of public utility holding companies and certain transactions and activities between public service corporations and their affiliated interests.
2. The Rules provide that the Commission has 30 days to "approve, disapprove, or suspend for further consideration" an application seeking a waiver of the Rules. A.A.C. R14-2-806. On September 19, 2001, Staff and MWE executed a stipulation for extension of the time period to approve, disapprove, or suspend for an additional 60 days to provide Staff with additional time to analyze the application.
3. On October 5, 2001, the Hearing Division issued a Procedural Order extending the timeframe to approve, disapprove, or suspend for further consideration, this application until December 3, 2001.
4. MWE is a wholly-owned subsidiary of Phelps Dodge Corporation ("PDC"), a New York corporation headquartered in Phoenix, Arizona. MWE serves approximately 2,000 residential and

1 small business customers in portions of Greenlee County, Arizona. One of MWE's customers is  
2 Phelps Dodge Mining Company, which accounts for most of MWE's demand and revenues.

3 5. PDC is one of the world's largest mining companies. PDC provided lists of 217 wholly-  
4 owned subsidiaries and another 39 subsidiaries that are at least 50 percent owned by PDC, all of which  
5 would be considered affiliates of MWE under the Rules. PDC and its affiliates generated over \$4.5  
6 billion in revenues during the year 2000, of which approximately \$60 million (or 1.3 percent) was  
7 generated by MWE.

8 6. MWE asserts that the full application of the Rules is unnecessary and burdensome since  
9 most of PDC's revenues are generated by, and its capital investments are in, unregulated businesses.

10 7. MWE asserts that most of PDC's activities have little or no effect on Arizona or MWE.

11 8. MWE requests a limited waiver of A.A.C. R14-2-803 that limits notice of organizations  
12 and reorganizations to organizations or reorganizations that are likely to have a material adverse  
13 impact on MWE.

14 9. MWE requests a limited waiver of A.A.C. R14-2-804 (B)(1) that waives Commission  
15 approval for MWE to obtain a financial interest, or guarantee or assume the liabilities of an affiliate  
16 except for transactions that are likely to have a material adverse impact on MWE.

17 10. MWE requests a waiver of all the other requirements of A.A.C. R14-2-804 including the  
18 reporting of loans, evidences of indebtedness, and all other transactions between and among MWE's  
19 affiliates and parent in the ordinary course of business.

20 11. MWE requests a complete waiver of A.A.C. R14-2-805 eliminating a requirement to file  
21 annual reports on PDC's diversification activities and plans.

22 12. MWE requests expedited consideration and a stay of the Rules during the period of  
23 consideration of this application.

24 13. Staff has determined that approval of MWE's request for a limited waiver of A.A.C.  
25 R14-2-803 to restrict reporting requirements to organizations and reorganizations that are likely to  
26 have a material adverse impact on MWE may allow significant organizations and reorganizations to

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1 occur without Commission oversight. Staff recommends a limited waiver that would require the  
2 reporting of organizations and reorganizations that are likely to have a direct impact on MWE's  
3 financial statements in excess of a total of \$100,000.

4 14. Staff also determined that the request for a limited waiver of A.A.C. R-14-2-804 (B)(1)  
5 and the waiver of the remainder of A.A.C. R-14-2-804 might allow significant transactions to occur  
6 without Commission oversight. Staff recommends a limited waiver that would require the reporting  
7 of all transactions that are likely to have a direct impact on MWE's financial statements in excess of  
8 a total of \$100,000.

9 15. Staff recommends approval of MWE's request for a waiver of A.A.C. R14-2-805. Staff  
10 notes that the other reporting requirements of the Rules may have a more direct effect on MWE than  
11 the annual report required in this section.

12 16. Staff notes that MWE became subject to the Rules in 1998. However, to accommodate  
13 MWE's needs, Staff recommends approval of a retroactive waiver of the Rules for MWE for the  
14 period from 1998 until this Order is effective, to be supplanted by the limited waiver approved herein.

15 17. Staff recommends the Decision in this case be made retroactive to when the Rules  
16 became applicable to MWE in 1998.

#### 17 CONCLUSIONS OF LAW

18 1. MWE is an Arizona public service corporation within the meaning of Article XV,  
19 Section 2 of the Arizona Constitution.

20 2. The Commission has jurisdiction over MWE and over the subject matter of the  
21 application.

22 3. The Commission having reviewed the application and Staff's Memorandum of  
23 November 14, 2001, concludes that it is in the public interest to grant MWE's request but subject to  
24 the limitations recommended by Staff.

#### 25 ORDER

26 IT IS THEREFORE ORDERED that the application be and hereby is granted but with  
27 modifications as recommended by Staff. MWE shall comply with the reporting requirements of  
28 A.A.C. R14-2-803 and 804 when MWE's financial statements are likely to be directly impacted in

1 excess of a total of \$100,000. MWE shall not be subject to A.A.C. R14-2-805. MWE must comply  
2 with all other requirements of the Rules.

3 IT IS FURTHER ORDERED that MWE's request for a waiver of the Rules is hereby granted  
4 retroactive for the period from 1998 until this order is effective, to be supplanted by the limited waiver  
5 approved herein.

6 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

7 **BY ORDER OF THE ARIZONA CORPORATION COMMISSION**

8  
9 CHAIRMAN

COMMISSIONER

COMMISSIONER

10 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive  
11 Secretary of the Arizona Corporation Commission, have  
12 hereunto, set my hand and caused the official seal of this  
13 Commission to be affixed at the Capitol, in the City of  
14 Phoenix, this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

15 \_\_\_\_\_  
16 BRIAN C. McNEIL  
17 Executive Secretary

18 DISSENT: \_\_\_\_\_

19 EGJ:DWC:jbc/CCK  
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1 SERVICE LIST FOR: THE MORENCI WATER & ELECTRIC COMPANY  
2 DOCKET NO. E-01049A-01-0692

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